CONSTITUTIONAL LAW—REVOKING LICENSE.—The defendant, doing business as an undertaker, applied to the board of health for a license to build a stable near his place of business. After the defendant, relying on the license issued, had built the stable, the board of health, on the petition of defendant's neighbors, rescinded and canceled said license. On a bill to enjoin defendant from using the stable, *Held,* that the license, containing no conditions for its exercise, cannot be revoked by the board of health, though it had been improvidently issued. *Lowell* v. *Archambault* (1905), — Mass. —, 75 N. E. Rep. 65.

The soundness of this decision may be questioned and we regret that the dissenting opinions do not appear. However, the peculiar facts of the case may justify it. Defendant claims the board of health had authority to issue the license under Statute of 1895, Ch. 213, but that said statute contains no provision for its recall. Further, that he secured the license before expending money on building, and therefore had a constitutional right to protection. See *Hirn* v. *State,* I Ohio 15 (1852). After a license, containing no conditions for forfeiture, has been granted, it cannot be revoked except by the legislature. In *Grand Rapids* v. *Braudy,* 105 Mich. 670 (1895), it was held that a license granted by the city council could not be revoked unless a reservation of such right was stated in the license. However, a legislative act which revokes a license, does not impair the obligation of a contract, for a license is not a contract. *Commonwealth* v. *Brennan,* 103 Mass. 70 (1869) and *Lantz* v. *Hightstown,* 46 N. J. Law 102 (1884). The board of health had a right to state conditions in the license for violation of which it might be revoked and should have done so in this case. *Schwuchow* v. *Chicago,* 68 Ill. 444 (1873). Failing to place such conditions in the license the board could not revoke it arbitrarily after the defendant had expended money relying upon it. In *Commonwealth* v. *Moylan,* 119 Mass. 109 (1875), it was held that a license cannot be revoked either arbitrarily or because it was injudiciously granted. A license can be revoked only by the action of the legislature or because the licensee has broken one or more of its conditions. See *Mayor* v. *3rd Ave. Ry.,* 33 N. Y. 42 (1865). Also *Shuman* v. *City of Fort Wayne,* 127 Ind. 109 (1890), holding that the power to revoke licenses lies wholly with the legislature.

CONSTITUTIONAL LAW—TAX ON LAWFUL VOCATION.—Appellant was convicted of misdemeanor under the statute (Acts 1903, p. 344), for acting as emigrant agent without paying the required license. *Held,* the license tax imposed by said statute on emigrant agents is not so excessive or unreasonable as to render the act invalid. *Kendrick* v. *State* (1905), — Ala. —, 39 So. Rep. 203.

Appellant contended that the statute is violative of the Fourteenth Amendment. The Supreme Court decided this question in *Williams* v. *Fears* (1900), 179 U. S. 270, in which case an emigrant agent is defined as any person engaged in hiring laborers to be employed beyond the limits of the state. The court held that the levy of a tax did not amount to such an interference with the freedom of transit, or of contract, as to violate the Federal Constitution. There is no doubt that the appellant's right to pursue

any lawful calling is protected by the constitution. *State* v. *Associated Press* (1900), 159 Mo. 410. But the state has power to levy a reasonable tax on such occupation. See *State* v. *Hunt* (1901), 129 N. C. 686. Also *State* v. *Napier* (1901), 63 S. C. 60, in which it was held that the "Emigrant Agents' Act" is not violative of the Constitution of the United States, nor of the State Constitution, as it does not abridge the privileges of a citizen, nor is it discriminatory. The Act does not apply to persons living near the state line, who employ laborers for service in their *own* business beyond the state, as such persons are not emigrant agents, but principals. The reasonableness of the tax was also disputed, the appellant claiming the act to be in violation of the provision of the State Constitution that "emigration shall not be prohibited." It appears the tax assessed was $500 for each county in which business was conducted. Regarding a similar tax, the court decided in *Williams* v. *Fears*, 179 U. S. 270, that such a tax was not unreasonable or such as would amount to a prohibition of the business. The states may levy excises and the term is applied to the taxes upon licenses to pursue certain occupations. See COOLEY'S PRINCIPLES OF CONSTITUTIONAL LAW, p. 56.

CORPORATIONS—TAXATION OF ASSETS—TRUST AND INSURANCE COMPANY.—Plaintiff's charter provides that all the net profits of its insurance branch are to be divided pro rata among the policy holders as the directors may report the same for division. The statutes exempt from "any further tax" on securities owned by them in their own right, all corporations paying a tax on their capital stock. Plaintiff's capital stock is $1,000,000, on which it paid taxes at an appraised value of $5,100,000, and the defendants are about to return for taxation a large amount of assets held by the company to cover maturing insurance risks, claiming that under its charter plaintiff holds these in trust for the policy holders. *Held*, (two judges dissenting), that these assets are held by the plaintiff in its own right and are taxable as a part of the assessed value of its capital stock. *Provident Life & Trust Co.* v. *Durham et al.* (1905), — Pa. —, 61 Atl. Rep. 636.

A tax on the capital stock of a corporation is a tax on its property and assets. *Commonwealth* v. *Standard Oil Co.*, 101 Pa. St. 119; *People ex rel. U. T. Co.* v. *Coleman*, 126 N. Y. 433, 27 N. E. 818; I WILGUS CORP. CAS. 778. and the assets sought to be taxed in the principal case were therefore constituent elements of the appraised value of the capital on which plaintiff paid a tax. The court based its opinion that these assets were not held in trust on the fact that the fund consisted not of the net profits of the insurance business but was part of the plaintiff's gross assets subject to insurance liabilities. This seems to be placing the policy holders in the same position as the stockholders in an ordinary corporation. Until a dividend is declared the shareholder is not a creditor of the corporation. *Price* v. *Morning Star Mining Co.*, 83 Mo. App. 470; *Alsop* v. *De Koven*, 107 Ill. App. 190; and even then unless some specific fund is set aside for the payment of the dividend, there is no trust relation between the company and the stockholder. *Hunt* v. *O'Shea*, 69 N. H. 600, 45 Atl. 480; II WILGUS CORP. CAS. 1628; *In re Severn & Wye & Severn Bridge Ry. Co.*, 74 Law T. (N. S.) 219. In the absence of charter or contract provisions to the contrary, the profits of